

State of Missouri
Office of Secretary of State

Case No. AP-11-25

IN THE MATTER OF:

POP N GO, INC.; MELVIN WYMAN,
AND KIRK PORTER

Respondents.

Serve Pop N Go, Inc. at:
Herbert Davis, Registered Agent
601 West 5th Street, 8th Floor
Los Angeles, California 90071

Serve Melvin Wyman at:
12429 East Putnam Street
Whittier, California 90602

Serve Kirk Porter at:
19744 Beach Boulevard #346
Huntington Beach, California 92648

CONSENT ORDER AS TO RESPONDENT KIRK PORTER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Kirk Porter, ("Porter" or "Respondent"), offered and sold unregistered securities in violation of Section 409.3-301 RSMo. (Cum. Supp. 2011), transacted business as an unregistered agent in the State of Missouri in violation of Section 409.4-402(a) RSMo. (Cum. Supp. 2011), and omitted to state material facts in connection with the offer or sale of a security in violation of Section 409.5-501, RSMo, (Cum. Supp. 2011) and that this constitutes grounds to issue a cease and desist order against Respondent pursuant to Section 409.6-604, RSMo. (Cum. Supp. 2011)
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the alleged activity by Respondent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities ("Commissioner") has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2011), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives his right to a hearing with respect to this matter.
6. Respondent waives any right that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein provided by Respondent prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

**COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

I. FINDINGS OF FACT

12. Pop N Go, Inc. ("POPN"), is a Delaware Corporation and conducts business in the State of California. POPN has a mailing address of 12429 E. Putnam Street, Whittier, California 90602. POPN's agent for service of process is Herbert Davis ("Davis"). Davis maintains a mailing address of 601 West 5th Street, 8th Floor, Los Angeles, California 90071.
13. Melvin Wyman ("Wyman") is the chief executive officer of POPN. Wyman maintains a mailing address of 12429 E. Putnam Street, Whittier, California 90602. A check of the records maintained by the Commissioner indicates that Wyman has never been registered as an agent with the State of Missouri.
14. Kirk Porter ("Porter") was a representative of POPN and maintains a last known mailing address of 19744 Beach Boulevard #346, Huntington Beach, California 92648. A check of the records maintained by the Commissioner indicates that Porter has never been registered as an agent with the State of Missouri.
15. Sterling Trust Company ("Sterling Trust"), is a passive self-directed IRA custodian for self-directed IRAs qualified business retirement plans and non-qualified custodial accounts. Sterling Trust has an address of 1101 Wooded Acres, Suite 120, Waco, Texas 76710.
16. As used herein, the term "Respondent" refers to Porter.
17. Sometime in 2006, Porter contacted a sixty-five (65) year-old Independence, Missouri resident ("MR1") concerning an investment opportunity in POPN. MR1 stated that MR1's seventy-eight (78) year-old spouse ("MR2") also invested in POPN.
18. Investigators with the Enforcement Section, during the course of the investigation, interviewed MR1 on numerous occasions ("MR1 Interviews"). During the MR1 Interviews MR1 stated, among other things, that:
 - a. Porter told MR1 and MR2 that:
 - i. Porter was a representative of POPN;
 - ii. POPN was in the business of selling popcorn machines;
 - iii. POPN was seeking funds from investors for assistance in the growth of POPN;
 - iv. POPN was selling convertible debentures;
 - v. the investment in convertible debentures would pay fourteen percent (14%) interest per year with interest payments to be paid on a quarterly basis;
 - vi. the risks associated with the investment would be low;
 - vii. MR1 and MR2 could invest their IRA funds in POPN through Sterling Trust;
 - viii. MR1 and MR2 could learn more about POPN by reviewing its website;
 - b. sometime in 2006, POPN provided documents to MR1 and MR2 containing company literature, company news releases, and projected balance sheets;

- c. on or about December 8, 2006, MR1 and MR2 invested twenty-five thousand dollars (\$25,000) in POPN convertible debentures through Porter and Wyman;
 - d. subsequent to the December 2006 investment, Porter and Wyman called MR1 and MR2 and told MR1 and MR2 that interest rates on the POPN convertible debentures remained high and encouraged MR1 and MR2 to invest more money in these convertible debentures;
 - e. Porter told MR1 and MR2 that if MR1 and MR2 invested funds through an IRA, Sterling Trust would require that MR1 and MR2 sign subscription agreements stating that MR1 and MR2 were accredited investors;
 - f. MR1 and MR2 each executed a subscription agreement indicating that they were accredited investors and sent the subscriptions agreements to POPN;
 - g. Porter never discussed the definition of an accredited investor with MR1 and MR2 to determine if MR1 and MR2 were accredited investors prior to the investment;
 - h. on or about February 26, 2007, MR2 invested six thousand nine hundred ninety-one dollars and eighty-two cents (\$6,991.82) in convertible debentures with POPN through MR2's IRA at Sterling Trust;
 - i. on or about March 8, 2007, MR1 invested fifty-five thousand eight hundred eighty-eight dollars and twenty-seven cents (\$55,888.27) in convertible debentures with POPN through MR1's IRA at Sterling Trust;
 - j. MR1 and MR2 were issued convertible debentures from POPN, signed by Wyman. These debentures had a one (1) year maturity date;
 - k. on several occasions, MR1 and MR2 requested that POPN return MR1's and MR2's invested funds;
 - l. Wyman told MR1 and MR2, among other things, that POPN had no funds to pay MR1 and MR2 and that converting these debentures to POPN shares did not make sense because the shares were worth "almost nothing;"
 - m. by March 8, 2008, all of MR1 and MR2's investments in the convertible debentures had matured;
 - n. MR1 and MR2 have not received a return of their eighty seven thousand eight hundred eighty dollars and nine cents (\$87,880.09) investment principal from POPN, Wyman or Porter; and
 - o. MR1 and MR2 have not received all of the interest on their convertible debentures.
19. The Enforcement Section's investigation revealed, among other things, that:
- a. MR1 and MR2 were not accredited investors;
 - b. MR1 and MR2's invested funds went to POPN;
 - c. Porter claimed, among other things, that:
 - i. Porter received seventeen thousand five hundred seventy-six dollars and two cents (\$17,576.02) as commissions from the sales of POPN securities to MR1 and MR2;
 - ii. Porter had no part in drafting the POPN offering materials; and
 - iii. Wyman and POPN were responsible for the information contained in the projected sales, projected net earnings and the offering documents.
20. to an investigator with the Enforcement Section revealed that POPN projected sales in 2007 of fourteen million one hundred ninety-nine thousand four hundred dollars (\$14,199,400) and a net earnings of five million six hundred sixteen thousand one hundred dollars (\$5,616,100).
21. The Enforcement Section reviewed POPN's filings with the Securities and Exchange Commission ("SEC") for the POPN common stock. This information revealed that for the nine (9) months ending on June 30, 2006, POPN had total sales of seventy-seven thousand three hundred fifty-seven dollars (\$77,357), and a net loss of nine million six hundred fifty-five thousand six hundred eighty-two dollars (\$9,655,682).
22. In a filing with SEC regarding POPN common stock dated October 12, 2006, POPN disclosed, among other things, that:

"Our independent auditor . . . has expressed substantial doubt as to our ability to continue as a going concern As of September 25, 2006, we have \$8,435,502 in convertible debentures We are in

default in the repayment of principal on approximately \$3,067,416, or 36.36% of the convertible debentures."

23. Wyman sent a letter to the Enforcement Section, dated November 6, 2009. In this letter Wyman stated, among other things, that:
- a. Wyman was the founder of POPN and served as CEO;
 - b. POPN was a reporting company trading over-the-counter for the period 2000-2008;
 - c. MR1 and MR2 were the only Missouri residents who purchased securities from POPN;
 - d. Porter served as a finder and that Porter received funds as a finder pursuant to a verbal understanding;
 - e. POPN sold securities in Missouri pursuant to a Regulation D exemption; and
 - f. no notice documents were filed in the State of Missouri as the sale in Missouri was a limited one-time event to accredited investors.
24. A check of the records maintained by the Missouri Commissioner of Securities confirmed that:
- a. there was no registration or notice filing indicating status as a "federal covered security" for the convertible debentures offered and sold by POPN;
 - b. POPN had not filed a Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption; and
 - c. Porter was not registered as a securities agent in Missouri.
25. During the MR1 Interviews, MR1 stated that Porter failed to disclose to MR1 or MR2, among other things, that:
- a. there was no registration or notice filing indicating status as a "federal covered security" for the convertible debentures offered and sold by POPN;
 - b. POPN had not filed a Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption;
 - c. neither Wyman nor Porter were registered securities agents in Missouri; and/or
 - d. POPN's independent auditor had expressed substantial doubt as to POPN's ability to continue as a going concern.

II. CONCLUSIONS OF LAW

26. The Commissioner finds Respondent Porter offered and sold unregistered securities in violation of Section 409.3-301 RSMo. (Cum. Supp. 2011), transacted business as an unregistered agent in violation of Section 409.4-402(a) RSMo. (Cum. Supp. 2011), and omitted to state material facts in connection with the offer or sale of a security in violation of Section 409.5-501, RSMo, (Cum. Supp. 2011) and that this constitutes grounds to issue a cease and desist order against Respondent pursuant to Section 409.6-604, RSMo. (Cum. Supp. 2011)
27. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2011).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

28. Respondent, his agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from, selling unregistered securities in violation of Sections 409.3-301 RSMo. (Cum. Supp. 2011), transacting business as an unregistered agent in violation of Section 409.4-402(a) RSMo. (Cum. Supp. 2011), and omitting to state material facts in connection with the offer or sale of a security in violation of Section 409.5-501, RSMo, (Cum. Supp. 2011).
29. Respondent is ordered to pay seventeen thousand five hundred seventy-six dollars and two cents (\$17,576.02) in restitution. This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. This payment will be distributed by that Fund to the investors as

identified in Exhibit A.

30. Respondent shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of five thousand dollars (\$5,000). This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund.
31. Respondent is ordered to pay three thousand dollars (\$3,000) as the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund; The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund.
32. Respondent shall pay his own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 20TH DAY OF APRIL, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Kirk Porter, Respondent

Approved as to Form:

Matthew R. Moriarity
Polsinelli Shughart PC
Attorney for Respondent Porter

CONSENT – KIRK PORTER
POP-N-GO
AP-11-25 / I2009-103

EXHIBIT A
MR1 and MR2

\$17,576.02